

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

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|--|---|------------------------------------|
| CELESTER VAUGHN, II, |) | |
| |) | Civil Action No. 04 - 158 |
| Plaintiff, |) | |
| |) | Judge Nora Barry Fischer |
| v. |) | Magistrate Judge Lisa Pupo Lenihan |
| |) | |
| Warden, WILLIAM SCHOAPT, CAROL |) | |
| (STEELE) SMITH, Director of Treatment, |) | |
| |) | |
| Defendants. |) | |

ORDER

The above captioned case was initiated on February 5, 2004 by the filing of a Motion to Proceed In Forma Pauperis (Doc. No. 1) accompanied by a Complaint. It was referred to United States Magistrate Judge Ila J. Sensenich for pretrial proceedings in accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rules 72.1.3 and 72.1.4 of the Local Rules for Magistrate Judges. The case was transferred to Magistrate Judge Lisa Pupo Lenihan on April 6, 2004.

The Magistrate Judge's Report and Recommendation (doc. no. 33), filed on October 19, 2007, recommended that Defendants' Motion to Dismiss (doc. no. 30) be granted. Plaintiff filed Objections to the Report and Recommendation on November 1, 2007 (doc. no. 34). In his Objections, Plaintiff claims that prison officials where he currently is incarcerated opened his legal mail, *i.e.*, the Report and Recommendation, outside his presence. Plaintiff misunderstands the nature of protected legal mail in the prison system. Correspondence from the Courts is not considered legal or "special mail" unless the envelope is marked with an attorney's name and an indication that the person is an attorney, and the front of the envelope is marked "Special Mail--Open only in the presence of the inmate." Public Records such as Court Orders and Report and Recommendations

are not special or legal mail.

After review of the pleadings and documents in the case, together with the Report and Recommendation, and the Objections thereto, the following order is entered:


AND NOW, this 5th day of November, 2007;

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (doc. no. 30) is **GRANTED**.

IT IS FURTHER ORDERED that the Report and Recommendation (doc. no. 33) of Magistrate Judge Lenihan, dated October 19, 2007, is adopted as the opinion of the court.

IT IS FURTHER ORDERED that the Clerk of Court is directed to mark this case **CLOSED**.

By the Court:


Nora Barry Fischer
United States District Judge

cc: Lisa Pupo Lenihan
United States Magistrate Judge

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